TION

A

OF

Sup

PHILO
TI
UI

PETIT
UI
TH
TH

HERBER
WILLIA
C. DON
1724
Ph
GODFRE
511 I
Ne

Martin

Waring v
(193
Weiss vs
Wexley v
aff'd

Constitut
Constitut
Constitut
Constitut
Constitut
Copyrigh
Rule 12, F
Section 5
25 U. S. C
Rules of C

ɜ.

nt,

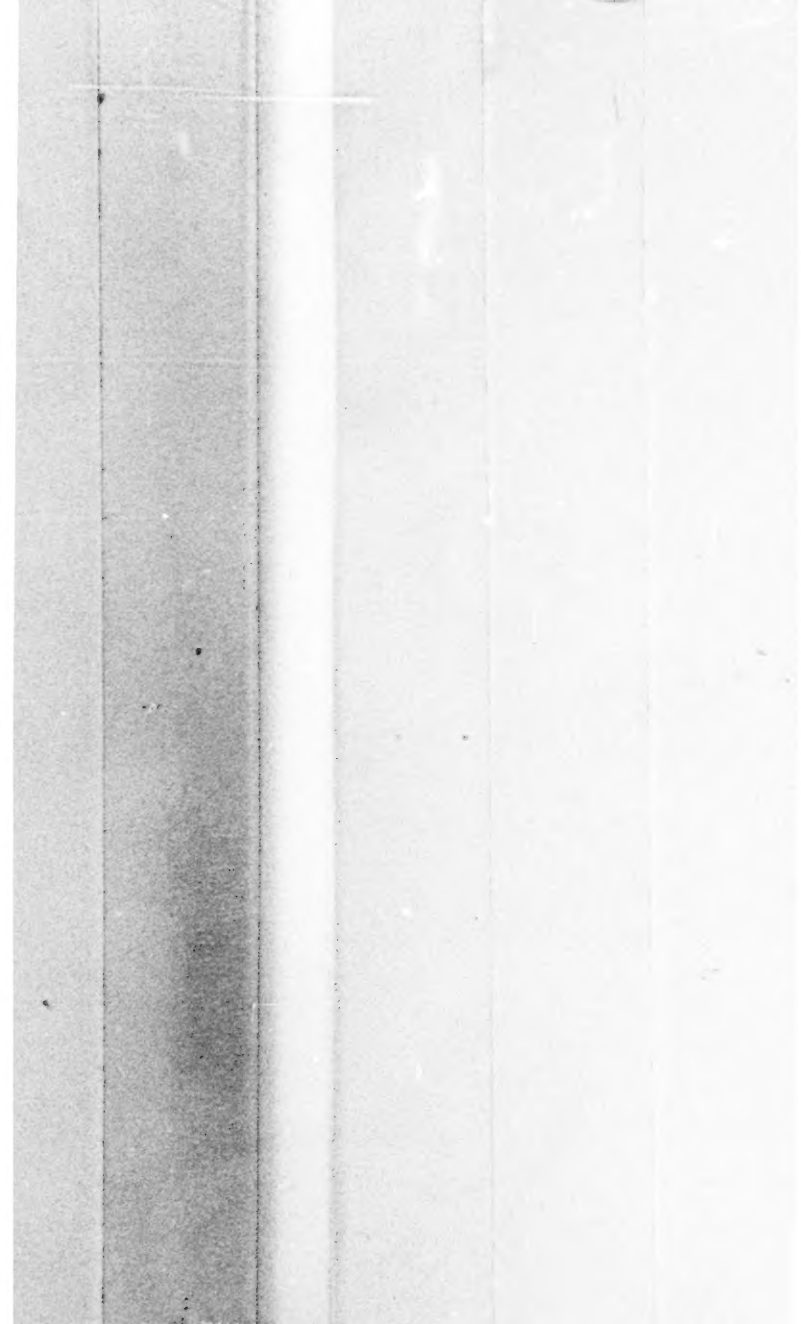
AYTON,
r, Con-

rs.

) THE
R THE
PORT

ustices

Chese-
that a
rder of
Circuit
rehear-



'ical event may not be exhibited on tele-
ecting the exhibitor and its sponsors to
of the performers therein, even though
ns no physical title or copyright to the

ecision violate the Fifth and Fourteenth
Constitution of the United States, when
rty rights in and to a motion picture
of *new* property rights in respondent,
aranteed to the film producer's creation
opyright Act, U. S. Code—Title 17?

ept of the unrestricted monopoly in re-
nce wholly out of harmony with Article
Clause 8 of the Constitution upon which
s founded?

rt err in giving to respondent judicially
ghts in and to his performance, based
dicial conclusion that at the time he
eproduction of his fight with Louis he
knowledge of the possible commercial
r of the technological advances to be
king possible the showing of the film on

rt of Appeals violate the rule laid down
e v. Tompkins by its misinterpretation
of the law of Pennsylvania and New

ion of the Court of Appeals in conflict
f the Ninth Circuit?

STATEMENT.

Respondent, Albert Ettore, met Joe Louis in a boxing test in Philadelphia in 1936. Motion pictures of the were taken, for which Ettore was paid his agreed comp tion. No restrictions were placed on the future use c film. In 1949 and again in 1950 National Broadcasting pany telecast the motion pictures of the fight as part series entitled "Greatest Fights of the Century". The mercial sponsor of this program was Chesebrough Man turing Company, Consolidated. The pictures appear the Philadelphia area on Station WPTZ, owned by P Television Broadcasting Company. This station was an iate of N. B. C. Because these telecasts were withou consent of Respondent he claimed damages for allege vasion of his rights of privacy and of his right of prop

At the trial in the District Court the parties entered a Stipulation of the agreed facts (exclusive of dam upon which respondent relied. On motion of petitic the Court entered an Order of Dismissal in accordance the provisions of Rule 41(b), Rules of Civil Procedure. opinion in support of said dismissal was written by Di Judge Watson. On appeal to the Court of Appeals action of the District Court was reversed and the cas manded with directions to reconsider the issues pres in the light of the opinion of the Court of Appeals. majority opinion by Chief Judge Biggs was concurred District Judge Willson. Circuit Judge Hastie filed a senting opinion.

con-
fight
ensa-
f the
Com-
of a
com-
ufac-
d in
hilco
affil-
the
d in-
erty.
into
ges)
ners,
with
An
trict
the
re-
nted
The
n by
dis-

man sells a farm which five years later
real estate development because of an ex
the seller of the farm could not rescin
would a Court award him additional com
face of this clear statement of law, the
indicate that Ettore, because of (to hi
nological advances in television is given
compensation for something (i. e. his
fight) which he unqualifiedly sold many
correct view in practically all reported
present one) is that technological advar
of definite reservation in the original con
owner of the film. In this case, techn
owner and not the performers appearin

The majority opinion (p. 11) would s
the decision of this Court in

Manners vs. Morasco, 252 U. S.
RICORDI vs PARAMOUNT,
held that there may
tizations of the same story, each capa
righted. As the Court stated:

> "Each is separate and distinct f
> each has its own dramatic rights, *in*
> *ture rights.* Neither may encroach
> neither in my opinion is the one lim
> (Emphasis supplied.)

In a decision dealing with copyright
licensees

Harper Bros. vs. Klaw, 232 F.
N. Y.) (1916),

the following appropriate statement app

> "The 'movie' rights to Ben Hur u
> in 1899 but in nubibus or (what is f
> thing) in contemplation of law onl
> fact, they are an accretion or unea

becomes a valuable
anding city, surely
l the contract nor
pensation". In the
lecision goes on to
n) unknown tech-
right to additional
erformance in the
years before. The
lecisions (save the
ces, in the absence
tract, belong to the
logy benefits such
g in the film.
em to misinterpret

317 (1920).
12 F. Supp. 537 (1950)
be several drama-
ble of being copy-

om the other and
luding motion pic-
on the other but
ited by the other."

owners and their

609 (D. C., S. D.

ars (p. 613):

doubtedly existed
equently the same
. As a matter of
ed increment con-

ferred of late years upon the copy
ingenuity of many inventors
(Emphasis supplied.)

The Court of Appeals concedes that
down in

Erie R. Co. vs. Tompkins, 304

it is required to either follow Pennsylv
to arrive at the result which that tr
Despite this, the Court improperly lean
ultimate conclusion upon the leading

Waring vs. WDAS Broadcasti
A. 631 (1937).

There Plaintiff sought an injunction a
ing of records made by his orchestra
records had printed on them "not licer
cast". The Court of Appeals took th
that by this decision Waring *as an in*
ductor or performer was held to have
records in suit, which rights the Cou
tect. This position is in error. The Co
Waring, as conductor nor any of the
any rights in these records. See p. 42

"He (Waring) and all of the pla
their respective parts and *none o*
individual property right in the
It is the corporation, *not the o*
which alone is entitled to assert
of property in its renditions.
plaintiff individually would have
(Emphasis supplied.)

The equity action in Waring's name i
mitted to stand because Waring was
the corporate stock. The Pennsylvar
corporation as plaintiff.

The
the P

This c
ment t
ing of
that th
the pl

th
hi
te
on
br
no
tu

The
the Co
(p. 9):

In th
tempte
on tele
In the
1931 so
assigno
rights.

Court of Appeals misapplied the statement of law in nnsylvania case of

Philadelphia Retail Liquor Dealers Assn. vs. Pennsylvania Liquor Control Board, 360 Pa. 269, 62 A. 2d 53 (1948).

se was cited by petitioners as authority for the statehat television was but another medium for the showmotion picture films. The Court below in concluding is case did not so hold (footnote 12, p. 13) disregarded in language of the opinion (p. 274):

"The learned Court below found and it is not disputed it television is used to broadcast moving picture exbitions. * * * When a motion picture is shown on a evision set the same there appears as would be seen the screen where the televised motion picture is being badcast. In that situation, such entertainment could t fairly be characterized as other than a moving pice exhibition * * *"

majority decision is in conflict with the decisions of urt of Appeals—9th Circuit. These decisions are

Republic Pictures vs. Roy Rogers, 213, F. 2nd F. 662 (1954);
Autry vs. Republic Productions, 213 F. 2d 667 (1954);
Wexley vs. KKTV, 108 F. Supp. 588 S. D. Calif. (1952) aff'd p. c. 220 F. 2nd 438 (1955).

e first two, well-known motion picture stars at- to enjoin the use of their old motion picture films ision and in both instances this right was denied. hird, the author and copyright owner of a play in d motion picture rights therein to the defendant's or licensor. His contract reserved television The Court held the reservation applied only to live

The decision in that case is not the law
Sharkey would have no right of action
tion 51 of the New York Civil Rights L

Gautier vs. Pro Football, Inc.,
431, 106 N. Y. Supp. 2d 553;
(107 N. E. 2d 488) 1951.

It will be noted the *Sharkey* decision is
York law.

The second case cited:

Weiss vs. Hollywood Film Ente
Law Week 2608 (Cal. Super
merely determined that where the ow
35 millimeter negative films, licensed t
of 16 and 8 millimeter positive prints, *li*
cal use, defendant licensee could not i
films for use on television. This was
owner.

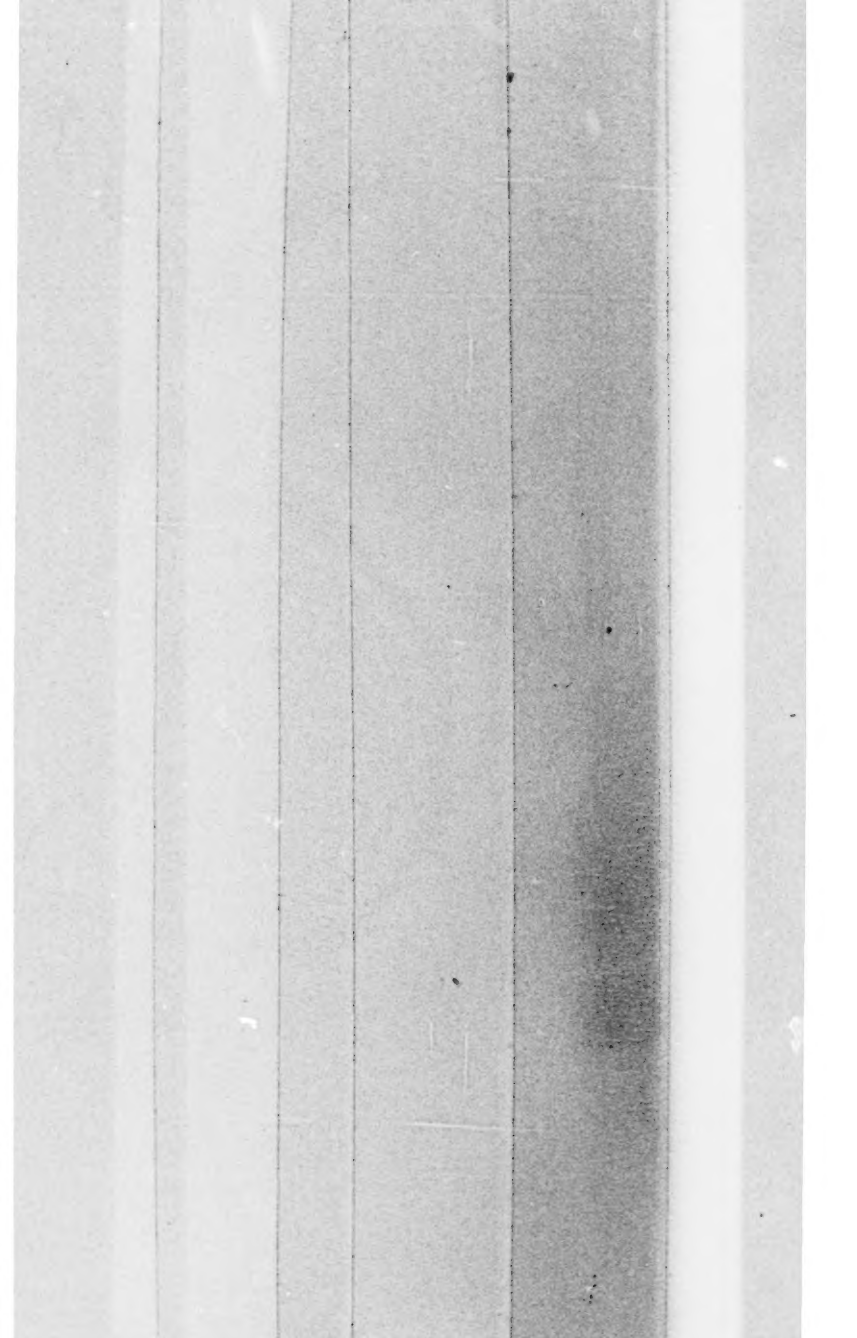
Neither of these cases sustain the
"such films may not be used for a purp
at the time of their creation".

CONCLUSION.

The majority opinion shows plain er
in conflict with the decisions of anot
Because of this and the other reasons h
Petitioners pray that your Honorable
tiorari to the United States Court of A
Circuit.

Respectfully submitte
OSCA
Cou

HERBERT A. BARTON,
WILLIAM T. CAMPBELL,
C. DONALD SWARTZ,
GODFREY JULIAN JAFFE,
Of Counsel.



Page
1
1
2
2

Page
2
3
3

2
1

IN THE

rt of the United States

TOBER TERM, 1955.

No. 825.

ION BROADCASTING CORPORA-
ON, INC., AND CHESEBROUGH
ING COMPANY, CONSOLIDATED,
Petitioners,

v.

BERT ETTORE.

WRIT OF CERTIORARI TO THE UNITED
APPEALS FOR THE THIRD CIRCUIT.

SPONDENT IN OPPOSITION.

INIONS BELOW.

he United States District Court for
of Pennsylvania is reported at 126 F.
on of the United States Court of Ap-
ircuit is reported at 229 F. 2d 481.

URISDICTION.

the Court of Appeals was entered on
e petition for a writ of certiorari was
6. The jurisdiction of this Court is
S. C. 1254(1).